IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4051 OF 2005

Tina Urmit Aniljit Singh ..Petitioner.

Versus

Aniljit Mohanjit Singh & Anr. ..Respondents.

Mrs. Mrunalini Deshmukh i/by M/s. Shiralkar & Co., for the Petitioner.

Mr. S. Akhar for Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 29TH JUNE, 2005.

P.C.:

. Rule. Rule made returnable forthwith. Mr. Akhar waives notice for Respondents. Heard by consent.

2. At the outset, it appears that the acrimony between the parties is severe enough for them to have declined availing of any opportunity of mediation. Undoubtedly, there is a letter written on behalf of the Respondent that the parties may attempt

reconciliation on their own but that does not seem to be unconditional and the petitioner seems to be unable to comply with the condition, namely, that of going to Delhi at her own cost. Hence, it appears that the mediation or conciliation is not possible at least at this stage.

3. The respondent husband has sued the petitioner for divorce under section 13(1)(i)(a) of the Hindu Marriage Act. Its trial has been expedited by the Supreme Court, which has directed the trial court to take it on day to-day basis. The evidence as regards the divorce petition, the custody petition appears to be almost over. The evidence on the question of maintenance seems to be under way.

4. It appears that in the course of the cross-examination of the respondent -husband, who is the petitioner and hence, the main witness, it became necessary for the learned counsel for the petitioner to put certain questions which pertain to the respondent husband’s financial capacity. Since, the respondent appears to have declined to answer those questions based on xerox copies of certain documents which were produced by the learned counsel for the

petitioner, the petitioner applied for issuance of witness summons to the Chartered Accountants of the respondent, which has been granted by the trial court. There is no grievance made in this regard by the respondent.

5. It appears that since the matter has been directed to proceed day to-day, the trial court directed the petitioner to continue with the cross-examination of other witnesses namely, the respondent's father, aged 71 years, who had come from Delhi and mother, who have already filed their affidavits in lieu of evidence under Order 18 of the Code of Civil Procedure. The court has deferred the cross-examination of the Respondent in the meanwhile.

6. Mrs. Deshmukh, the learned counsel for the petitioner vehemently contended that this order has caused great injustice to the petitioner in view of the fact that the petitioner has been compelled to disclose her line of cross-examination; meant for the Respondent, while cross-examining the other witnesses of the respondent. According to the learned counsel for the petitioner, this is due to the fact that the respondent's father and the respondent are doing same

joint family business and the cross-examination of the respondent's father and mother will make him wiser when he re-enters the witness box. There seems to be no allegation in this writ petition regarding such joint family business. It is difficult to see, at this stage, how any prejudice would be caused if the petitioner is called upon to cross-examine the other witnesses and then again cross-examine the Respondent. I am, therefore, of the view that prima facie, prejudice is not apparent from the order of the court. I, however, leave this question to be argued finally if the petitioner so wishes and I, therefore, see no reason to interfere at this stage.

7. The learned counsel for the petitioner next contended that, depending on the contents of the documents received from Chartered Accountant, it may become necessary to cross- examine the respondent's father and mother in case anything in the documents pertain to their testimony. Undoubtedly the petitioner will be able to make an appropriate application in that regard, which right is hereby reserved to the petitioner. The trial court will decide the application if made, in accordance with law. The learned counsel for the Respondent fairly

stated that he has no objection to this.

8. It was lastly urged on behalf of the petitioner that the trial court committed an error in declining to issue witness summons to the Commissioner of Income Tax as prayed for by the petitioner and certain other documents. Admittedly, those documents were the subject of a notice to produce them, served by the petitioner on the respondent. In case, the respondent does not produce those documents, the court would be at liberty to draw such inference as may be permissible in law.

9. In this view of the matter, I see no reason to interfere. The petition is, therefore, hereby disposed of with the aforesaid directions.

10. In view of the pendency of this writ petition, in which mediation was attempted, some days have been taken up. Therefore, time to decide the Hindu Marriage Petition which expires on 30th June, 2005, is hereby extended upto 30th July, 2005 by consent of both the parties.

29.06.2005 (S.A.BOBDE,J)

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